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DEC 23 2005

OFFICE OF PETITIONS

In re Application of : DECISION ON PETITION
Gerald Horn :
Application No. 09/854,414 :
Filed: May 10, 2001 :
Atty Docket No.: :
HORN006CIP :

This is a decision on the Petition to Withdraw Holding of Abandonment Based on Evidence that a Reply was Timely Mailed or Filed Pursuant to 37 CFR §1.181, filed December 9, 2005.

The petition is granted.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed April 13, 2005. The notices set a three (3) month period for reply. No extensions of time having been obtained under 37 CFR 1.136(a), this application became abandoned on July 14, 2005. A Notice of Abandonment was mailed on October 20, 2005.

Applicant asserts that a timely reply to the Office action to wit - an Amendment, was filed in the Office, along with an Information Disclosure Statement ("IDS") and a Petition for Extension of Time. In support of this assertion, applicant files copies of an Amendment, IDS and an Extension of Time Request, and a return receipt postcard which acknowledges receipt by this Office of, inter alia, a Response to Office action (12 pages); an IDS and Supplemental IDS; a Petition for Extension of Time, and a Transmittal Letter.

A review of Office records reveal that this Office received Response to Office action (12 pages); an IDS and Supplemental IDS; a Petition for Extension of Time, and a Transmittal Letter on October 14, 2005.

A review of the Transmittal Letter reveals that it lists a Response to Office action (12 pages); an IDS and Supplemental IDS; a Petition for Extension of Time, and a Transmittal Letter as having been transmitted to this Office, and includes a Certificate of Mailing dated October 11, 2004. A further review of Office records reveal that Applicant was charged, inter alia, the fee for a three month extension of time on October 14, 2005.

Under 37 CFR 1.8

"[c]orrespondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

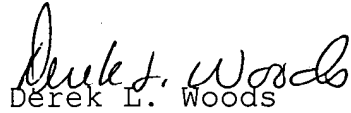
(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

In view of the foregoing, Notice of Abandonment is hereby vacated, and the holding of abandonment is hereby withdrawn.

No petition fee has been charged and none is due.

The application file is being forwarded to Technology Center Art Unit 1618 for processing of the Response, filed October 11, 2005, in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at 703-305-0014.

A handwritten signature in cursive script, appearing to read "Derek L. Woods".

Derek L. Woods
Attorney
Office of Petitions